

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT EARL CLAYBORNE JR.,)	8:15CV198
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
SCOTT FRAKES, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

Plaintiff has filed a motion for an extension of time to file a Rule 59(e) motion to alter or amend the court’s judgment of dismissal with prejudice that was entered on October 27, 2016. The motion for extension of time will be denied because the court is not authorized by the Federal Rules of Civil Procedure to grant the motion. *See* [Fed. R. Civ. P. 6\(b\)\(2\)](#) (“A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d) and (e), and 60(b).”); *United States v. Mask of Ka-Nefer-Nefer*, 752 F.3d 737, 743 (8th Cir. 2014) (“Rule 59(e)’s 28-day time limit *may not be extended*.”) (emphasis in original).

“A motion for extension of time must be filed no later than 28 days after the entry of the judgment.” [Fed. R. Civ. P. 59\(e\)](#). This time limit has not yet expired.

Plaintiff also requests an extension of time to file a notice of appeal, until sometime after a ruling is made on the proposed Rule 59(e) motion. This request will be denied, as well. While the Federal Rules of Appellate Procedure permit the district court to grant an extension of time to file a notice of appeal in certain circumstances, *see* [F.R.A.P. 4\(a\)\(5\)](#), those Rules also provide that if a motion to alter or amend the district court’s judgment is filed within the time allowed by Rule 59(e), then the time to file a notice appeal will run from the entry of an order disposing of the Rule 59(e) motion, *see* [F.R.A.P. 4\(a\)\(4\)\(iv\)](#).

In summary, Plaintiff still has time to file a motion to alter or amend the court's judgment. If he does, in fact, file such a motion within the time allowed by Rule 59(e), then the time for filing a notice of appeal will be tolled automatically. Plaintiff is cautioned that the instant motion for an extension of time will not be treated by the court either as a Rule 59(e) motion or as a notice of appeal, and therefore it will be necessary for him to actually make those filings in the future, in a timely manner.

IT IS ORDERED that Plaintiff's motion for extension of time (Filing No. [60](#)) is denied in all respects.

November 9, 2016.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge